

EXHIBIT J

From: [Mikela Sutrina](#)
To: [Hepp, Rick](#); [Gross, Joseph](#); [Kevin Cloutier](#); [Victoria Hubona](#); [driepehoff@fisheldowney.com](#)
Cc: [Sonida Barnhiser 68443_149 Correspondence Emails](#)
Subject: RE: Capital Senior Living, Inc. v. Heather Barnhiser Case No. 3:22-cv-00606 [IWOV-BENESCH.FID3552620]
Date: Wednesday, March 1, 2023 9:14:10 PM
Attachments: [image004.png](#)

Hi Rick,

Thank you for the proposed ESI search terms. We are reviewing but generally do not have objections to these mutually proposed terms. We will confirm and/or provide additional suggested terms this week.

As it relates to depositions, we agree that in-person depositions are preferred and will aim to schedule those the week of April 17 or April 24 and will follow up with availability for Ms. Barnhiser. We will also identify the witnesses we intend to depose for scheduling.

Finally, as it relates to the forensic cell phone review for Ms. Barnhiser and Ms. Selders, we will not agree to produce their cell phones for examination. While we appreciate the opportunity to further consider this issue, we maintain our position that this request is an overreach and that searching Defendants' personal cell phones for text message artifacts is unnecessary, burdensome, and intrusive. Defendants have produced all text messages in their possession. And, as noted in their interrogatory responses, Defendants Barnhiser and Selders did not intentionally delete any text messages, but instead had a general practice of regularly deleting text messages from their devices. And, both suspended this general practice when instructed by counsel to do so via legal hold. Both have attempted to recover any deleted messages but have thus far been unable to do so. We are prepared to address this issue with the Court.

We reserve and expressly do not waive any rights in regard to this issue or otherwise and remain willing to discuss further.

Regards,
Mikela

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From: Hepp, Rick <RHepp@beneschlaw.com>
Sent: Monday, February 27, 2023 12:59 PM
To: Mikela Sutrina <MSutrina@sheppardmullin.com>; Gross, Joseph <jgross@Beneschlaw.com>; Kevin Cloutier <KCloutier@sheppardmullin.com>; Victoria Hubona <vhubona@sheppardmullin.com>; driepehoff@fisheldowney.com
Cc: Sonida _ Barnhiser _68443_149_ __Correspondence _ Emails <{F3552620}.BENESCH@beneschlaw.imanage.work>
Subject: RE: Capital Senior Living, Inc. v. Heather Barnhiser Case No. 3:22-cv-00606 [IWOV-BENESCH.FID3552620]

Hi Mikela,

I am attaching our mutual search terms for your review. There may be some terms that are more specific to Capital Senior but generally these should be applicable for all of the parties.

Also, I am generally available for depositions the weeks of April 17 and April 24. Capital Senior currently plans to depose Ms. Barnhiser. Ideally, we would like to do the depositions in person and on consecutive days if possible. Of course, the depositions would be contingent on getting responsive documents produced by both parties.

Rick



Richard Hepp
Attorney
Labor & Employment Practice Group
Benesch Friedlander Coplan & Aronoff LLP

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From: Mikela Sutrina <MSutrina@sheppardmullin.com>

Sent: Wednesday, February 22, 2023 1:33 PM

To: Hepp, Rick <RHepp@beneschlaw.com>; Gross, Joseph <jgross@Beneschlaw.com>; Kevin Cloutier <KCloutier@sheppardmullin.com>; Victoria Hubona <vhubona@sheppardmullin.com>; driepenhoff@fisheldowney.com

Cc: Sonida _ Barnhiser _68443_149_ __Correspondence _ Emails
<F3552620.BENESCH@beneschlaw.imanage.work>

Subject: RE: Capital Senior Living, Inc. v. Heather Barnhiser Case No. 3:22-cv-00606 [IWOF-BENESCH.FID3552620]

Hi Rick,

Thank you for the call yesterday. Please allow this email to serve as a summary of our discussion.

- We agreed to consider engaging in private mediation following initial depositions, which we agreed are most likely begin in early April. We will send a list of our initial deponent list for your review. Please forward your April availability for purposes of scheduling as well.
- As it relates to mediation, as discussed, if we decide that mediation will be the most effective route, we agree that we will consider moving the Court to reset the settlement conference to accommodate a mediation as we move forward.
- As it relates to Interrogatory Nos. 17 and 18 to Barnhiser, Interrogatory Nos. 20 and 21 to Selders, and Interrogatory Nos. 21 and 22 to Meridian and Maumee Pointe, you agreed to limit the scope of the Interrogatories such that "Capital Senior" and "the Wellington" will be replaced by "the Waterford." To the extent Defendants have responsive information pertaining to the revised Interrogatories, Defendants will supplement their answers.
- We agreed to continue to produce non-privileged, responsive communications in response to Plaintiff's discovery requests concerning the operations of the Waterford or the residents and/or employees of the Waterford in Defendants' possession, and we confirmed we have not withheld any such responsive items. As noted, our review continues and it makes sense for the parties to agree on search terms and protocol to

streamline ESI efforts.

- We informed you that Ms. Barnhiser and Ms. Selders continue to work with their respective cell phone service providers to determine if any potentially responsive text messages deleted in the regular course of Ms. Barnhiser's and Ms. Selders's text message practices can be retrieved. We agreed to provide you a response as to whether such messages can be retrieved on or before March 1 before discussing a forensic review of their cell phones only or other proposed next steps. We understand that should we refuse to produce Ms. Barnhiser's or Ms. Selders's cell phones for forensic examination to determine whether any text message artifacts may be retrieved, Capital Senior will move to compel on this issue.
- Lastly, we agreed to work together on determining search terms that can be applied to locate potentially responsive documents. You offered to send us your list of search terms first, so that we may review the list and determine if there are any mutually agreeable terms.

Again, we thank you for your time today and we look forward to hearing from you soon. If you disagree with any of the representations above, please let us know.

Regards,
Mikela

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From: Hepp, Rick <RHepp@beneschlaw.com>
Sent: Wednesday, February 15, 2023 8:49 AM
To: Mikela Sutrina <MSutrina@sheppardmullin.com>; Gross, Joseph <jgross@Beneschlaw.com>; Kevin Cloutier <KCloutier@sheppardmullin.com>; Victoria Hubona <vhubona@sheppardmullin.com>; driepenhoff@fisheldowney.com
Cc: Sonida _ Barnhiser _68443_149_ __Correspondence _ Emails <[\[F3552620\].BENESCH@beneschlaw.imanage.work](mailto:[F3552620].BENESCH@beneschlaw.imanage.work)>
Subject: RE: Capital Senior Living, Inc. v. Heather Barnhiser Case No. 3:22-cv-00606 [IWOV-BENESCH.FID3552620]

Mikela,

I'm available from 9:30 to 11 a.m. and after 2 p.m. on 2/21.

Thanks,
Rick

Richard Hepp
Attorney
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From: Mikela Sutrina <MSutrina@sheppardmullin.com>

Sent: Wednesday, February 15, 2023 8:50 AM

To: Hepp, Rick <RHepp@beneschlaw.com>; Gross, Joseph <jgross@Beneschlaw.com>; Kevin Cloutier <KCloutier@sheppardmullin.com>; Victoria Hubona <vhubona@sheppardmullin.com>; driepenhoff@fisheldowney.com

Cc: Sonida _ Barnhiser _68443_149_ __Correspondence _ Emails
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Subject: RE: Capital Senior Living, Inc. v. Heather Barnhiser Case No. 3:22-cv-00606 [IWOV-BENESCH.FID3552620]

Hi Rick,

We're following up in writing to hopefully streamline the issues for our call. Are you available on Tuesday 2/21? Please let us know if you have some availability that day.

Regards,
Mikela

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From: Hepp, Rick <RHepp@beneschlaw.com>

Sent: Tuesday, February 14, 2023 2:10 PM

To: Gross, Joseph <jgross@Beneschlaw.com>; Kevin Cloutier <KCloutier@sheppardmullin.com>; Mikela Sutrina <MSutrina@sheppardmullin.com>; Victoria Hubona <vhubona@sheppardmullin.com>; driepenhoff@fisheldowney.com

Cc: Sonida _ Barnhiser _68443_149_ __Correspondence _ Emails
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Subject: RE: Capital Senior Living, Inc. v. Heather Barnhiser Case No. 3:22-cv-00606 [IWOV-BENESCH.FID3552620]

Victoria,

I am following up on our telephone call last week. Please let me know when you are available to discuss Capital Senior's letter and whether Defendants have an interest in a private mediator.

Thank you,
Rick

Richard Hepp
Attorney



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From: Treece, Tracy <ttreece@Beneschlaw.com> **On Behalf Of** Gross, Joseph

Sent: Monday, February 6, 2023 12:41 PM

To: kcloutier@sheppardmullin.com; msutrina@sheppardmullin.com; vhubona@sheppardmullin.com; driepenhoff@fishelldowney.com

Cc: Gross, Joseph <jgross@Beneschlaw.com>

Subject: Capital Senior Living, Inc. v. Heather Barnhiser Case No. 3:22-cv-00606

Please see the attached correspondence. Also, you can find Plaintiff's supplemental production of documents here: <https://benesch.sharefile.com/d-s989abda65f344bd6ac177884ca8d7e5c>. These documents are encrypted and the password will be sent in a separate email. If you have any questions, contact Joseph N. Gross at (216) 363-4163 or jgross@beneschlaw.com.

Thank you.



Tracy E. Treece
(she/her/hers)
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